

PUBLIC CHAPTER NO. 428

HOUSE BILL NO. 1557

By Representatives Shepard, Overbey

Substituted for: Senate Bill No. 693

By Senators Bunch, Black, Marrero

AN ACT to amend and repeal portions of Tennessee Code Annotated, Title 4; Title 38; Title 55 and Title 68, relative to enacting the Revised Uniform Anatomical Gifts Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Parts 1 and 2 of Tennessee Code Annotated, Title 68, Chapter 30, are hereby repealed in their entirety and replaced by the following:

§ 68-30-101. This act may be cited as the "Revised Uniform Anatomical Gift Act."

§ 68-30-102. As used in this act, unless the context otherwise requires:

(1) "Adult" means an individual who is at least eighteen (18) years of age;

(2) "Agent" means an individual:

(A) Authorized to make health care decisions on the principal's behalf by a power of attorney for health care or an advance directive; or

(B) Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal;

(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education;

(4) "Decedent" means a deceased individual whose body or part (if specified) is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than this act, a fetus;

(5) "Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian

of the individual who makes, amends, revokes, or refuses to make an anatomical gift. The term does not include a person to which an anatomical gift could pass under § 68-30-110 of this part;

(6) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver license, identification card, or donor registry;

(7) "Donor" means an individual whose body or part is the subject of an anatomical gift;

(8) "Donor registry" means a database that contains records of anatomical gifts;

(9) "Driver license" means a license or permit issued by the department of safety to operate a vehicle, whether or not conditions are attached to the license or permit;

(10) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes;

(11) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem;

(12) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state;

(13) "Know" means to have actual knowledge;

(14) "Minor" means an individual who is under eighteen (18) years of age;

(15) "Organ procurement organization" means a person designated by the secretary of the United States department of health and human services as an organ procurement organization;

(16) "Parent" means a parent whose parental rights have not been terminated;

(17) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body;

(18) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or

governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(19) “Physician” means an individual authorized to practice medicine or osteopathy under the law of any state;

(20) “Procurement organization” means an eye bank, organ procurement organization, or tissue bank;

(21) “Prospective donor” means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal;

(22) “Reasonably available” means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift;

(23) “Recipient” means an individual into whose body a decedent’s part has been or is intended to be transplanted;

(24) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(25) “Refusal” means a record under § 68-30-107 that expressly states an intent to bar other persons from making an anatomical gift of an individual’s body or part;

(26) “Sign” means, with the present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process;

(27) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(28) “Technician” means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator;

(29) "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education;

(30) "Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue; and

(31) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

§ 68-30-103. This act applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

§ 69-30-104. An anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in § 68-30-105 of this part by:

(1) The donor, if the donor is an adult or if the donor is a minor and is:

(A) Emancipated; or

(B) Authorized under state law to apply for a driver license because the donor is at least fifteen (15) years of age;

(2) An agent of the donor, unless the power of attorney for health care, advance directive or other record prohibits the agent from making an anatomical gift;

(3) A parent of the donor, if the donor is an unemancipated minor; or

(4) The donor's guardian.

§ 68-30-105.

(a) A donor may make an anatomical gift:

(1) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license;

(2) In a will, any living will, durable power of attorney for health care or other instrument, signed by the individual complying with the term of title 32, chapter 11 or

title 34, chapter 6, part 2, or advance directive under title 68, chapter 11, part 18;

(3) During a terminal illness or injury of the donor, by any form of communication addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness; or

(4) As provided in subsection (b).

(b) A donor or other person authorized to make an anatomical gift under § 68-30-104 of this part may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(1) Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) State that it has been signed and witnessed as provided in subdivision (b)(1).

(c) Revocation, suspension, expiration, or cancellation of a driver license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

(d) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

§ 68-30-106.

(a) A donor may amend or revoke an anatomical gift, not made by will, by:

(1) A signed statement;

(2) An oral statement made in the presence of two (2) individuals;

(3) Any form of communication by a terminal patient addressed to a physician; or

(4) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(b) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a).

§ 68-30-107. An individual may refuse to make an anatomical gift of the individual's body or part by a writing signed in the same manner as a document of gift or any other writing used to identify the individual as refusing to make an anatomical gift. A terminal patient may refuse to make an anatomical gift by oral statement or other form of communication.

§ 68-3-108.

(a) Except as otherwise provided in this part, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body. An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

(b) A donor's revocation of an anatomical gift of the donor's body or part under § 68-30-105 is not a refusal and does not bar another person specified in §§ 68-30-104 or 68-30-109 from making an anatomical gift of the donor's body or part.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part, another person may not make, amend, or revoke the gift of the donor's body or part under § 68-30-109.

(d) A revocation of an anatomical gift of a donor's body or part by a person other than the donor does not bar another person from making an anatomical gift of the body or part under §§ 68-30-104 or 68-30-109.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under § 68-30-104, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under § 68-30-104, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

§ 68-30-109.

(a) Subject to subsections (b) and (c) an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) A guardian or conservator of the person of the decedent at the time of death if the court order authorizes the guardian or conservator to make health care decisions;

(2) An agent;

(3) The spouse of the decedent;

(4) Adult children of the decedent;

(5) Parents of the decedent;

(6) Adult siblings of the decedent;

(7) Adult grandchildren of the decedent;

(8) Grandparents of the decedent;

(9) A surrogate identified pursuant to § 68-11-1806;

(10) An adult who exhibited special care and concern for the decedent; and

(11) Any other person having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in subdivisions (a)(4), (5), (6), (7) or (8) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under § 68-30-111 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) is reasonably available to make or to object to the making of an anatomical gift.

§ 69-30-110.

(a) A person authorized to make an anatomical gift under § 68-30-109 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subsection (c), an anatomical gift by a person authorized under § 68-30-109 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under § 68-30-109 may be:

(1) Amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2) Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under subsection (b) is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

§ 68-30-111.

(a) An anatomical gift may be made to the following persons named in the document of gift:

(1) A hospital accredited medical school, dental school, college, or university, organ procurement organization, or other appropriate person for research or education;

(2) Subject to subsection (b), an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or

(3) An eye bank or tissue bank.

(b) If an anatomical gift to an individual under subsection (a)(2) cannot be transplanted into the individual, the part passes in accordance with subsection (g) in the absence of an express, contrary indication by the person making the anatomical gift.

(c) If an anatomical gift of one (1) or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (a) but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank;

(2) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank;

(3) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ; and

(4) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(d) For the purpose of subsection (c), if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If an anatomical gift of one (1) or more specific parts is made in a document of gift that does not name a person described in subsection (a) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g).

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as “donor”, “organ donor”, or “body donor”, or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g).

(g) For purposes of subsections (b), (e), and (f) the following rules apply:

(1) If the part is an eye, the gift passes to the appropriate eye bank;

(2) If the part is tissue, the gift passes to the appropriate tissue bank; and

(3) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (a)(2), passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subsections (a) through (h) or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under §§ 68-30-105 or 68-30-110 or if the person knows that the decedent made a refusal under § 68-30-107 that was not revoked. For purposes of the subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k) Except as otherwise provided in subsection (a)(2), nothing in this act affects the allocation of organs for transplantation or therapy.

§ 68-30-112.

(a) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and

(2) If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (a)(1) and the individual or deceased individual to whom it relates is taken to a

hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(c) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

§ 68-30-113.

(a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under § 68-30-111.

§ 68-30-114.

(a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the department of safety and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to information in the records of the department of safety to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(d) Unless prohibited by law other than this act, at any time after a donor's death, the person to which a part passes under § 68-30-111 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than this act, an examination under subsection (c) or (d) may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a), a procurement organization shall make a reasonable search for any person listed in § 68-30-109 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to § 68-30-111 subsection (i), the rights of the person to which a part passes under § 68-30-111 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part.

(i) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

(k) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(l) In determining whether an anatomical gift has been made, amended, or revoked under this act, a person may rely upon representations of an individual listed in § 68-30-109 subsection (a)(3), (4), (5), (6), (7), or (8) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

§ 68-30-115. A person who acts in accordance with this act or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

§ 68-30-116.

(a) A document of gift is valid if executed in accordance with:

(1) This act;

(2) The laws of the state or country where it was executed; or

(3) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

§ 68-30-117.

(a) In this section:

(1) "Advanced health-care directive" means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health-care decision for the prospective donor;

(2) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor; and

(3) "Health-care decision" means any decision regarding the health care of the prospective donor.

(b) If a prospective donor has a declaration or advance health-care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if the agent is not reasonably available, another person authorized by law other than this act to make health-care decisions on behalf of the prospective donor, shall act for the donor to resolve the

conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under Section 68-30-109. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

§ 68-30-118. In applying and construing this act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 68-30-119. An electronic signature shall be valid as if written. This act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or supersede Section 101(a) of that act, 15 U.S.C. Section 7001, or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

§ 68-30-120. Nothing contained in this act shall be construed to supersede or revoke, by implication or otherwise, any valid gift of the entire body to a medical school.

SECTION 2. Tennessee Code Annotated, Section 38-7-106(b), is amended by deleting the language “§ 68-30-204” and by substituting instead the language “title 68, chapter 30, part 1”.

SECTION 3. Tennessee Code Annotated, Section 55-50-352(a), is amended by deleting the language “§ 68-30-105(f)” and by substituting instead the language “title 68, chapter 30, part 1”.

SECTION 4. Tennessee Code Annotated, Section 4-3-2011(a), is amended by deleting the language “organ procurement agencies” wherever it appears and by substituting instead the language “organ procurement organization”.

SECTION 5. This act shall take effect July 1, 2007, the public welfare requiring it.

PASSED: May 29, 2007



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 13th day of June 2007



PHIL BREDESEN, GOVERNOR